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10 CALIFORNIA RIVER WATCH,

11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 CALIFORNIA RIVER WATCH,  
14 a 501(c)(3) nonprofit, Public  
Benefit Corporation,

CASE NO. '14CV2812 W JLB

**COMPLAINT FOR INJUNCTIVE  
RELIEF, DECLARATORY RELIEF,  
CIVIL PENALTIES, RESTITUTION  
AND REMEDIATION  
(Environmental - Clean Water Act -  
33 U.S.C. § 1251, *et seq*)**

15 Plaintiff

16 v.

17 CITY OF CARLSBAD,

18 Defendant.

19 NOW COMES Plaintiff CALIFORNIA RIVER WATCH, a nonprofit, Public  
20 Benefit Corporation, ("RIVER WATCH") by and through its attorneys, and for its  
21 Complaint against Defendant CITY OF CARLSBAD ("CARLSBAD") states as follows:

22 **I. NATURE OF THE CASE**

23 1. This is a citizen's suit for relief brought by RIVER WATCH under the Clean  
24 Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, specifically 33 U.S.C. §§ 1301, 1342 and  
25 1365 (CWA §§ 301, 402 and 505), to prevent CARLSBAD from repeated and ongoing  
26 violations of the CWA. These violations are detailed in the Notice of Violations and  
27 Intent to File Suit dated July 31, 2014 ("CWA NOTICE") made part of this pleading and  
28 attached hereto as EXHIBIT A.

1 2. CARLSBAD is a seaside resort city in northern San Diego County with a  
2 population estimated in 2012 at 109,318. Its geography is characterized by 3 lagoons.  
3 It occupies a 7-mile stretch of Pacific coastline. CARLSBAD's sewer service area  
4 extends from the Pacific Coast approximately 4 to 5 miles inland. The primary land use  
5 in CARLSBAD's sewer service area is residential, with local and regional commercial  
6 centers and several large industrial business parks located along the east side of El  
7 Camino Real. McClellan-Palomar Airport and several resort complexes and tourist-  
8 related facilities are centered around the Legoland amusement park and the Park Hyatt  
9 Aviara Resort. The major industrial areas, including the airport, are located in the center  
10 of the service area along Palomar Airport Road.

11 3. RIVER WATCH alleges CARLSBAD is routinely violating the CWA by  
12 discharging pollutants from CARLSBAD's wastewater collection system to waters of the  
13 United States without a National Pollution Discharge Elimination System ("NPDES")  
14 permit in violation of CWA §§ 301(a) and 505(f), 33 U.S.C. §§ 1311(a) and 1365(f).

15 4. RIVER WATCH alleges CARLSBAD is also routinely violating the Regional  
16 Water Quality Control Board, San Diego Region, Water Quality Control Plan ("Basin  
17 Plan,"), Environmental Protection Agency ("EPA") regulations codified in the Code of  
18 Federal Regulations, and toxics standards promulgated by the State Water Resources  
19 Control Board, as exemplified by CARLSBAD's operation of its wastewater collection  
20 system and incidents of unpermitted discharges from the wastewater collection system,  
21 as described in this Complaint and in the CWA NOTICE, to waters which are habitat for  
22 threatened or endangered species as that term is defined by the California EPA and the  
23 United States EPA, including Batiquitos Lagoon, Buena Vista Lagoon, Encinas Creek,  
24 and the Pacific Ocean – all waters of the United States.

25 5. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future  
26 violations, the imposition of civil penalties, and other relief for CARLSBAD's violations  
27 of the CWA as set forth in this Complaint.

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**II. PARTIES TO THE ACTION**

6. Plaintiff CALIFORNIA RIVER WATCH is an Internal Revenue Code § 501(c)(3) nonprofit, Public Benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. RIVER WATCH's southern California mailing address is 7401 Crenshaw Boulevard, #422, Los Angeles, California 90043. The specific purpose of RIVER WATCH is to protect, enhance and help restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna; and, to educate the public concerning environmental issues associated with these environs.

7. Members of RIVER WATCH reside in southern California where CARLSBAD's wastewater collection system, which is the subject of this Complaint, is located. Said members have interests in the waters and watersheds which are or may be adversely affected by CARLSBAD's discharges and violations as alleged herein. Said members use the effected waters and watershed areas for domestic water, recreation, sports, fishing, swimming, hiking, photography, nature walks and/or the like. Furthermore, the relief sought will redress the injury in fact, likelihood of future injury and interference with the interests of said members.

8. RIVER WATCH is informed and believes, and on such information and belief alleges, that CARLSBAD is now, and at all times relevant to this Complaint was, a municipality formed under the laws of the State of California, with administrative offices located at 1200 Carlsbad Village Drive, Carlsbad California.

**III. JURISDICTIONAL ALLEGATIONS**

9. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard to public participation in the enforcement of the CWA. 33 U.S.C. § 1251(e) provides, in pertinent part:

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1 “Public participation in the development, revision, and enforcement of any  
2 regulation, standard, effluent limitation, plan or program established by the  
3 Administrator or any State under this chapter shall be provided for,  
4 encouraged, and assisted by the Administrator and the States.”

5 10. Subject matter jurisdiction is conferred upon this Court by Section 505(a)(1) of the  
6 CWA, 33 U.S.C. § 1365(a)(1), which states in part,

7 “any citizen may commence a civil action on his own behalf against any  
8 person . . . who is alleged to be in violation of (A) an effluent standard  
9 or limitation . . . or (B) an order issued by the Administrator or a State  
10 with respect to such a standard or limitation.” For purposes of Section  
11 505, “the term ‘citizen’ means a person or persons having an interest  
12 which is or may be adversely affected.”

13 11. For purposes of CWA § 505, “the term ‘citizen’ means a person or persons having  
14 an interest which is or may be adversely affected.” (33 U.S.C. § 1365(g)).

15 12. All illegal discharges and activities complained of in this Complaint and in the  
16 CWA NOTICE occur in Batiquitos Lagoon, Buena Vista Lagoon, Encinas Creek, and  
17 the Pacific Ocean, all waters of the United States.

18 13. Members and supporters of RIVER WATCH reside in the vicinity of, enjoin  
19 visiting the area, derive livelihoods from, own property near, and/or recreate on, in or  
20 near and/or otherwise use, enjoy and benefit from the waterways and associated natural  
21 resources into which CARLSBAD discharges pollutants, or by which CARLSBAD’  
22 operations adversely affect said members’ interests, in violation of CWA § 301(a), 33  
23 U.S.C. § 1311(a). The health, economic, recreational, aesthetic and environmental  
24 interests of RIVER WATCH and its members may be, have been, are being, and will  
25 continue to be adversely affected by CARLSBAD’s unlawful violations as alleged in this  
26 Complaint. RIVER WATCH and its members contend there exists an injury in fact to  
27 them, causation of that injury by CARLSBAD’s complained of conduct, and a likelihood  
28 that the requested relief will redress that injury.

14. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), notice of the CWA  
violations alleged in this Complaint was given more than sixty (60) days prior to  
commencement of this lawsuit, to: (a) CARLSBAD, (b) the United States EPA, Federal

1 and Regional, and (c) the State of California Water Resources Control Board.

2 15. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this Complaint  
3 has been served on the United States Attorney General and the Administrator of the  
4 Federal EPA.

5 16. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District  
6 as the wastewater collection facilities under CARLSBAD's operation and/or control, and  
7 the sites where illegal discharges occurred, which are the source of the violations  
8 complained of in this action, are located within this District.

9 **IV. GENERAL ALLEGATIONS**

10 17. CARLSBAD owns and operates a wastewater collection system consisting of  
11 approximately 252 miles of gravity sewer pipelines, 6.2 miles of force main, 16 lift  
12 stations, and 6,300 manholes. CARLSBAD provides wastewater collection services to  
13 a service area of 30.5 square miles, including the majority of the City of Carlsbad with  
14 the exception of the southeast corner, including the community of La Costa, which  
15 receives sewer service provided by the Vallecitos Water District and Leucadia  
16 Wastewater District. All wastewater flows are conveyed to the Encina Water Pollution  
17 Control Facility for treatment, and then disposal through the ocean outfall, or further  
18 treatment and delivery to the adjacent Carlsbad Water Recycling Facility for reuse.

19 18. RIVER WATCH alleges CARLSBAD has a history of sewer system overflows  
20 ("SSOs") from its aging sewer lines. As self-reported by CARLSBAD in California  
21 Integrated Water Quality System's ("CIWQS") Public SSO Reports, CARLSBAD's  
22 collection system experienced 21 SSOs between July 21, 2009 and July 21, 2014, with  
23 a combined volume of 312,378 gallons – 37,550 gallons of which was admitted to have  
24 been discharged to surface waters. For example, on October 7, 2012, a spill reported by  
25 CARLSBAD occurred at 7382 Gabbiano Lane in Carlsbad, caused by a structural failure  
26 of sewer pipe. The spill volume was reported by the Carlsbad Municipal Water District  
27 as estimated at 34,040 gallons – 32,040 of which reached surface water, impacting  
28 Batiquitos Lagoon. On February 22, 2010, a spill occurred at 2500 Marron Road in

1 Carlsbad. The spill was reported by CARLSBAD as 1,000 gallons, none of which was  
2 recovered, and the spill reached the fishing areas of Buena Vista Lagoon.

3 19. Structural defects in CARLSBAD's collection system, which allow inflow and  
4 infiltration ("I/I") as well as exfiltration are one of the root causes of SSOs. Overflows  
5 caused by blockages, I/I and defects in the line result in the discharge of raw sewage into  
6 the surrounding area outside the collection system reaching surface waters via  
7 hydrologically-connected ground waters, gutters, canals and storm drains. Surface waters  
8 affected include Batiquitos Lagoon, Buena Vista Lagoon, Encinas Creek, and the Pacific  
9 Ocean, all waters of the United States.

10 20. RIVER WATCH alleges CARLSBAD has a history of non-compliance with the  
11 SSO reporting requirements mandated by the Statewide General Requirements for  
12 Sanitary Sewer Systems, Waste Discharge Requirements ("WDR") Order No. 2006-  
13 0003-DWQ, governing the operation of sanitary sewer systems ("Statewide WDR"). The  
14 Statewide WDR requires the reporting of SSOs to the CIWQS, said reports to include an  
15 estimate of the volume of any spill, the volume recovered, and the volume which reached  
16 a surface water. Field reports filed by CARLSBAD regularly indicate the SSO start time  
17 as the same time or within a few minutes of the time CARLSBAD was notified of the  
18 SSO. For example, in reporting the spill which occurred at 1687 Calliadra Road in  
19 Carlsbad on April 24, 2013, CARLSBAD's field report indicates both the estimated spill  
20 start time and the time the sanitary sewer agency was notified as exactly 11:00:00. These  
21 equivalencies are highly unlikely and result in an underestimation of the duration of the  
22 spill.

23 21. In addition to SSOs which discharge over land into surface waters, RIVER  
24 WATCH alleges underground leakages ("exfiltration") caused by structural defects  
25 result in discharges to adjacent surface waters via underground hydrological connections.  
26 RIVER WATCH alleges that such discharges are continuous wherever ageing, damaged,  
27 structurally defective sewer lines in CARLSBAD's collection system are located  
28 adjacent to surface waters, including Batiquitos Lagoon, Buena Vista Lagoon, Encinas

1 Creek, and the Pacific Ocean, all waters of the United States. Surface waters and ground  
2 water become contaminated with enterics including E. coli and other fecal coliform,  
3 exposing people to human pathogens. CARLSBAD's chronic collection system failures  
4 pose a substantial threat to public health.

5 22. RIVER WATCH alleges that both surface and underground SSOs from  
6 CARLSBAD's sewer pipelines have ongoing harmful effects on critical habitat in and  
7 around the Pacific Ocean adjacent to Carlsbad, Batiquitos Lagoon, Buena Vista Lagoon  
8 and Encinas Creek.

9 23. All illegal discharges and activities complained of in this Complaint occur in the  
10 waterways named in the CWA NOTICE and in this Complaint, all of which are waters  
11 of the United States, and at the locations identified in detail in the CWA NOTICE.

12 24. The Regional Water Quality Control Board, San Diego Region has determined that  
13 the watershed areas and affected waterways identified herein and in the CWA NOTICE  
14 are beneficially used for water contact recreation, non-contact water recreation, fresh  
15 water habitat, wildlife habitat, preservation of rare and endangered species, fish  
16 migration, fish spawning, industrial service supply, navigation, and sport fishing.

17 **V. STATUTORY AND REGULATORY BACKGROUND**

18 25. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits discharges of pollutants or activities  
19 not authorized by, or in violation of an effluent standard or limitation or an order issued  
20 by the EPA or a State with respect to such a standard or limitation including an NPDES  
21 permit issued pursuant to CWA § 402, 33 U.S.C. § 1342. Additional sets of regulations  
22 are set forth in the Basin Plan, California Toxics Rule, the Code of Federal Regulations  
23 and other regulations promulgated by the EPA and the State Water Resources Control  
24 Board.

25 26. CWA § 301(a) prohibits the discharges of pollutants or activities not authorized  
26 by, or in violation of an effluent standard or limitation or an order issued by the EPA or  
27 a State with respect to such a standard or limitation including a NPDES permit issued  
28 pursuant to CWA § 402, 33 U.S.C. § 1342. The wastewater collection facilities

1 including sewer lines, owned and operated by CARLSBAD are point sources under the  
2 CWA.

3 27. The affected waterways detailed in this Complaint and in the CWA NOTICE are  
4 navigable waters of the United States within the meaning of CWA § 502(7), 33 U.S.C.  
5 § 1362(7).

6 28. The Administrator of the EPA has authorized the Regional Water Quality Control  
7 Board to issue NPDES permits, subject to specified conditions and requirements,  
8 pursuant to CWA § 402, 33 U.S.C. § 1342.

9 29. CARLSBAD is not in possession of a NPDES Permit authorizing it to discharge  
10 pollutants from its wastewater collection system and point sources within the collection  
11 system to navigable waters of the United States within the meaning of the CWA.

## 12 **VI. VIOLATIONS**

13 30. RIVER WATCH alleges that CARLSBAD's violations as detailed above and in  
14 the CWA NOTICE, are violations of CWA § 301(a), 33 U.S.C. § 1311(a). The violations  
15 are established in Regional Water Quality Control Board, San Diego Region files for  
16 CARLSBAD's wastewater collection facilities, as well as in studies conducted by  
17 CARLSBAD in compliance with orders from regulatory agencies .

18 31. The enumerated violations are detailed above and in the CWA NOTICE  
19 incorporated by designating the section of the CWA violated and describing the activity  
20 constituting a violation.

21 32. The location of the discharges are the discharges points as described in the CWA  
22 NOTICE and in this Complaint.

## 23 **VII. CLAIM FOR RELIEF**

### 24 **Violation of CWA § 301(a), 33 U.S.C. § 1311(a)**

#### 25 **Discharges of a Pollutant From a Point Source to Waters of the United States**

26 RIVER WATCH realleges and incorporates by reference the allegations of  
27 Paragraphs 1 through 32 above including the CWA NOTICE as though fully set forth  
28 herein. RIVER WATCH is informed and believes and based upon such information and



1 belief alleges as follows:

2 33. CARLSBAD has violated and continues to violate the CWA as evidenced by the  
3 discharges of pollutants from a point source, the sewer lines making up CARLSBAD's  
4 wastewater collection system, to adjacent waters of the United States including  
5 Batiquitos Lagoon, Buena Vista Lagoon, Encinas Creek and the Pacific Ocean, in  
6 violation of CWA § 301(a), CWA, 33 U.S.C. § 1311(a).

7 34. The violations of CARLSBAD are ongoing and will continue after the filing of  
8 this Complaint. RIVER WATCH alleges herein all violations which may have occurred  
9 or will occur prior to trial, but for which data may not have been available or submitted  
10 or apparent from the face of the reports or data submitted by CARLSBAD to the  
11 Regional Water Quality Control Board, San Diego Region or to RIVER WATCH prior  
12 to the filing of this Complaint. RIVER WATCH will amend this Complaint if necessary  
13 to address CARLSBAD's violations which may occur after the filing of this Complaint.  
14 Each of CARLSBAD's violations is a separate violation of the CWA.

15 35. RIVER WATCH alleges that without the imposition of appropriate civil penalties  
16 and the issuance of appropriate equitable relief, CARLSBAD will continue to violate the  
17 CWA with respect to the enumerated discharges and releases as alleged herein. Further,  
18 that the relief requested in this Complaint will redress the injury to RIVER WATCH and  
19 its members, prevent future injury, and protect those members' interests which are or  
20 may be adversely affected by CARLSBAD's violations of the CWA.

21 **VIII. PRAYER FOR RELIEF**

22 RIVER WATCH prays this Court grant the following relief:

23 36. Declare CARLSBAD to have violated and to be in violation of the CWA;

24 37. Issue an injunction ordering CARLSBAD to immediately operate the its  
25 wastewater collection system in compliance with the CWA;

26 38. Order CARLSBAD to perform the following remedial measures:

27 a. The repair or replacement, within two (2) years, of all sewer lines in  
28 CARLSBAD's wastewater collection system located within two hundred (200)

- 1 feet from surface waters, which have been inspected via closed circuit television  
2 (CCTV) within the past five (5) years and were rated as Significantly Defective  
3 under the Pipeline Assessment and Certification Program ("PACP") rating system;
- 4 b. A Surface Water Condition Assessment, by way of CCTV, within two (2) years,  
5 of sewer lines in CARLSBAD's wastewater collection system located within two  
6 hundred (200) feet of surface waters, which have not been CCTV'd within the past  
7 five (5) years;
- 8 c. Within two (2) years after completion of the Surface Water Condition Assessment,  
9 the repair or replacement of all sewer lines which have been found to be  
10 Significantly Defective under the PACP rating system;
- 11 d. Beginning no more than one (1) year after completion of the Surface Water  
12 Condition Assessment, the commencement of a Full Condition Assessment by  
13 way of CCTV inspection of all sewer lines in CARLSBAD's wastewater  
14 collection system not within 200 feet of a surface water, to be completed within  
15 five (5) years. Any sewer pipe segment found to be Significantly Defective under  
16 the PACP rating system to be repaired or replaced within two (2) years of the  
17 rating determination;
- 18 e. Modification of CARLSBAD's Backup and SSO response plan to include the  
19 method or calculations used for estimating total spill volume, spill volume that  
20 reached surface waters and estimating spill volume recovered. For Category I  
21 Spills, creation of a listing of nearby residents or business owners who have been  
22 contacted to attempt to establish the SSO start time, duration, and flow rate, if  
23 such start time, duration, and flow rate have not been otherwise reasonably  
24 ascertained, such as from a caller who provides information that brackets a given  
25 time that the SSO began. Taking of photographs of the manhole flow at the SSO  
26 site using the San Diego Method array, if applicable to the SSO; or other  
27 photographic evidence that may aid in establishing the spill volume;

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- 1 f. A requirement for water quality sampling and testing whenever it is estimated that  
2 fifty (50) gallons or more of untreated or partially treated wastewater from an SSO  
3 enters surface waters. Constituents tested for to include: ammonia, fecal coliform,  
4 E. coli and a CAM-17 toxic metal analysis. CARLSBAD shall collect and test  
5 samples from three (3) locations: the point of discharge, upstream of the point of  
6 discharge, and downstream of the point of discharge. If any of said constituents  
7 are found at higher levels in the point of discharge sample and the downstream  
8 sample than in the upstream sample, CARLSBAD shall determine and address the  
9 cause of the SSO that enters surface waters, and employ the following measures  
10 to prevent future overflows: (1) if the SSO is caused by a structural defect, then  
11 immediately spot repair the defect or replace the entire line; (2) if the defect is  
12 non-structural, such as a grease blockage or vandalism to a manhole cover, then  
13 perform additional maintenance or cleaning, and any other appropriate measures  
14 to fix the non-structural defect;
- 15 g. The creation of website capacity to track information regarding SSOs; or, in the  
16 alternative, the creation of a link from CARLSBAD's website to the CIWQS SSO  
17 Public Reports. Notification to all customers and other members of the public of  
18 the existence of the web based program, including a commitment to respond to  
19 private parties submitting overflow reports.
- 20 h. Performance of human marker sampling on creeks, rivers, and wetlands adjacent  
21 to significantly defective sewer lines to test for sewage contamination from  
22 exfiltration;
- 23 i. Creation of a mandatory, private sewer lateral inspection and repair program  
24 triggered by any of the following events: transfer of ownership of the property if  
25 no inspection/replacement of the sewer lateral occurred within twenty (20) years  
26 prior to the transfer; the occurrence of two (2) or more SSOs caused by the private  
27 sewer lateral within two (2) years; a change of the use of the structure served (a)  
28 from residential to non-residential use, (b) to a non-residential use that will result

1 in a higher flow than the current non-residential use, and (c) to non-residential  
2 uses where the structure served has been vacant or unoccupied for more than three  
3 (3) years; upon replacement or repair of any part of the sewer lateral; upon  
4 issuance of a building permit with a valuation of \$25,000.00 or more; upon  
5 significant repair or replacement of the main sewer line to which the lateral is  
6 attached; and,

7 j. If a mandatory private sewer lateral inspection and repair program is not approved  
8 by the City Council for CARLSBAD, the implementation of an alternative  
9 program which is likely to result in a comparable number of inspections and  
10 repairs of privately owned sewer laterals, including but not limited to 1) setting  
11 up a grant and/or revolving loan program to provide partial loans for the  
12 replacement or repair of private sewer laterals, including installation of a property  
13 line cleanout, 2) negotiating group discount rates for the inspection and repair or  
14 replacement of private laterals with the contractor employed to replace the main  
15 line to which a group of laterals are attached.

16 39. Order CARLSBAD to pay civil penalties of per violation/per day for its violations  
17 of the CWA;

18 40. Order CARLSBAD to pay the reasonable attorneys' fees and costs of RIVER  
19 WATCH (including expert witness fees), as provided by 33 U.S.C. § 1365(d), and  
20 applicable California law; and,

21 41. For such other and further relief as the court deems just and proper.

22  
23 DATED: November 24, 2014

*/s/ Jack Silver*  
\_\_\_\_\_  
JACK SILVER  
Attorney for Plaintiff  
CALIFORNIA RIVER WATCH